

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1253 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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BR SHAH

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 1253 of 1989
MR DS VASAVADA for Petitioner No. 1
Mr.L.R.Pujari, Asst.GOVERNMENT PLEADER for Respondent No. 1-2
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CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 27/07/2001

C.A.V.JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has been seeking to quash and set aside the order, dated 25.5.1988 passed in Appeal No.137/87 by the Gujarat Civil Services Tribunal

(hereinafter referred to as "the Tribunal"), with further prayer to hold the petitioner a "specified Government servant" under Gujarat Civil Service Rules and entitled to all benefits and to take resort to remedial measures and also praying to quash and set aside the order terminating the service of the petitioner as illegal, violative of principles of natural justice, with the relief of reinstatement in service with full backwages.

2. The case of the petitioner is that he was working as a part-time Sweeper since 1979 and was discharging his duties to the satisfaction of the respondents; that the service of the petitioner was terminated somewhere in the year 1981. The petitioner challenged the said termination order passed by the respondents before the Tribunal. The Division Bench of the Tribunal held that the petitioner is a "specified Government servant" under Gujarat Civil Service Rules and is governed by the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. The respondent did not choose to prefer appeal against the said order passed by the Division Bench of the Tribunal in Appeal No.505/81. Implementing the said order, the respondents reinstated the petitioner in service in 1982; that thereafter, respondent No.2 who is the Disciplinary authority, again, issued a show cause notice on 7.4.1986. The respondent No.2 was also tendered an explanation by the petitioner but respondent No.2 did not hold any inquiry in pursuance of show cause notice; that the services of the petitioner were brought to an end by respondent No.2 on the ground that the explanation which was tendered by the petitioner was not satisfactory, and therefore, the service was terminated; That no inquiry was held by respondent No.2 pursuant to show cause notice and no opportunity of being heard was given by the respondent No.2; that the said action of the respondents in terminating the service of the petitioner is in gross violation of principles of natural justice and against the canons of social justice; that against the said order, the petitioner preferred departmental appeal before respondent No.1; that without going through the papers respondent No.1 vide order dated 13.2.1987 confirmed the termination order passed by respondent No.2. That thereafter, the petitioner preferred Appeal No.137/87 before the Tribunal. That the tribunal vide impugned order dismissed the appeal for want of jurisdiction. It is this order which is assailed in the present special civil application.

3. Admittedly the petitioner was working as a part-time Sweeper. The question involved is whether a part-time employee working in the Government department

is a specified Government servant within the meaning of Gujarat Civil Service (Discipline & Appeal) Rules, 1971 read with Section 2(h) of Gujarat Civil Services Tribunal Act, 1972.

4. It is submitted by the learned advocate for the petitioner that the petitioner held a civil post from 1979 to 1988 and is a "specified Government servant"; that even part-time Sweeper is a Government servant and a "specified Government servant"; that the Tribunal has not gone into the merits of the petitioner's case and dismissed the appeal for want of jurisdiction holding that the petitioner is not a "specified Government servant". It is submitted by the Learned AGP Shri Pujari that the part-time Sweeper is not a "specified Government servant" and that only full-timer is a regular employee and entitled to the protection of "specified Government servant". That the petitioner has not been given any scale for his wages and was paid fixed remuneration.

5. The learned advocate for the petitioner has placed reliance on the decision in the case of GOVINDBHAI KANABHAI MARU vs N.K.DESAI reported in 1988 LAB I.C.505 and contended that even a part-time sweeper is a protected Government servant. While considering the provisions contained in Schedule 2, Item 3 and Sections 2(5) and 25-F of Industrial Disputes Act, 1947 the learned single Judge observed that a part-time worker in service for 13 years in employment of contingency job is entitled to opportunity of being heard before termination of his services, and considering the length of service, namely, 13 years, it has been held that the part-time worker is entitled to opportunity of being heard before termination of his services. In my opinion, the principle laid down in this decision would not be applicable for the reason that the length of service clinches the issue of status of a protected Government servant, and thereby entitlement to be a right of audi alteram partem.

6. It may be appreciated that the payment of wages/salary at a fixed rate to the petitioner as a part-time sweeper is not disputed. The petitioner is admittedly not given any payscale nor is it suggested that considering his service, i.e. from 1979 to 1988, the petitioner was given and that he availed any other benefit, perks attached to the service nor is it suggested that he ever contributed to the Government Provident Fund. The petitioner is admittedly paid Rs.75/-p.m. for his part-time job for 2 hours daily and the amount was later raised to Rs.1,250/-per month as his

duty hours raised from 2 to 3 hours.

Under section 11 of the Act appeals to the tribunal can be filed only by a "specified Government servant" as defined under Section 2(h) of the Act. Section 2(h) of the Act defines "specified Government servant" mean "persons who are or who have been members of the civil services of the State of Gujarat of the Panchayat Service but does not include persons who are or who have been Police officers".

Article 309 of the Constitution of India deals with "Recruitment and Conditions of service of persons serving the Union or a State". Article 310 deals with "Tenure of office of persons serving the Union or a State", whereas Article 311 deals with "dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State". Clause (1) thereof provides that "no person who is a member of Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed". Clause (2) provides that "no person as aforesaid shall be dismissed, or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges".

7. It will be seen from the definition of "specified Govt.servant" in Rule 2(h) reproduced above and the Constitutional provisions in Article 311 of the Constitution of India. Article 311 makes clear distinction between a member of Civil Service of a State and person holding a civil post under a State, as the case may be. It may be noted that in Article 311 of the Constitution of India a member of a Civil Service of the Union or an All India Service or a Civil Service of a State is mentioned separately and a Civil Post means a post not connected with defence outside the regular civil services. The definition of "specified civil servant" in Section 2(h) of the Act does not include "a person who holds civil post under the Government. The tribunal under the Act was constituted for the purpose of securing in a more effective and satisfactory manner the just claims of members of civil services as well as persons holding any civil post under the Government. The omission of "a person holding a civil post under Government" in the definition of "specified Government servant" occurring in Section 2(h) of the Act is very significant and meaningful. It would mean that all

persons holding civil posts under the Government would not be entitled to the status of "specified Government servant". It may be seen that the post of part-time Sweeper is not a regularly constituted civil service and a member of regularly constituted Civil Service would be governed by the Recruitment & Classification Rules and also by the Rules regarding seniority, promotion, time pay scale, general rules etc. Now, in the absence of these, it can not be said that the post of a part-time sweeper is a regularly constituted service and the members thereof governed by the Rules applicable to them in the matter of seniority, pension, time payscale etc.

8. Placing reliance on the decision of the Punjab & Haryana High Court in the case of GURDARSHAN SINGH GREWAL vs THE STATE OF PUNJAB reported in 1983(1) SLJ 399 it has been submitted by the learned advocate for the petitioner that the service of permanent part-time Government employee can not be terminated without following the procedure envisaged under Article 311 of the Constitution of India, and such an order of termination being violative of Article 311 is liable to be quashed and set aside. It is further contended that absence of Statutory Rules or Regulations regarding employment of a permanent part-time Government employee can not entitle the termination of service of such employee without due inquiry, and compliance with the principles of natural justice. It has been submitted by the Ld.AGP for the respondents that the decision in the case of Gurdarshan Singh Grewal(supra) does not apply to the facts of the present case as the present petitioner is not holding any statutory permanent post.

In the case of Gurdarshan Singh Grewal (supra) the appointment of the petitioner was made by the Governor of Punjab to the post of Administrative General & Official Trustee-cum-Treasurer, Charitable Endowments, Punjab on certain terms and conditions. It is also observed that the post to which the petitioner was appointed was a permanent statutory post under respective Statute, i.e. The Administrative General Act, 1963, The Official Trustees Act, 1913 and The Charitable Endowments Act, 1890. It is in light of these facts, the High Court held that the termination of service of a permanent part-time Government employee was without following the procedure envisaged under Article 311 of the Constitution of India, without due enquiry and not in accordance with the principles of natural justice.

9. As pointed out above, in the instant case, the

post held by the petitioner was admittedly not a statutory post, the post at no point of time had permanency, the duty hours, i.e. 2 to 3 hours a day, are suggestive of temporary nature of work. The part time Sweeper post held by the petitioner for 2 to 3 hours a day is not a regularly constituted civil service. In absence of the post being a regularly constituted civil service, a person working on such a post can not be regarded entitled to the protection of Article 311 of the Constitution of India since only a statutory post can be regularly constituted post/service and only such employees can get the status of a "specified Government servant". Holding of civil post by itself would not be sufficient to bestow a status of a "specified Government servant". Over and above holding a civil post, what is required is that such a civil post should be a regularly constituted service. In the instant case, the second requirement, namely, the civil post held by the petitioner is a regularly constituted civil service, is not satisfied and, therefore, the petitioner would not be entitled to the status of a "specified Government servant".

10. The above discussion would reveal that the petitioner being a part time Sweeper can not be regarded as a protected Government servant and therefore the Tribunal will have no jurisdiction to entertain the appeal in view of the provisions contained in Gujarat Civil Services Tribunal Act, 1972, and the provisions of the said Act would be applicable only to the members of regularly constituted civil services of the State and, in that view of the matter, the impugned order, dated 25.5.1988 passed by the tribunal in Appeal No.137/87 can not be said to be suffering from any illegality so as to call for interference under Article 226 of the Constitution of India.

12. In the result, petition fails and is dismissed.
Rule is discharged. No order as to costs.

.7.2001 (N.G.NANDI, J)